

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

CHRISTINE TURNER, SPECIAL
ADMINISTRATOR OF THE ESTATE
OF LINDA WARNER, Deceased

PLAINTIFF

v.

No. 4:18-cv-468-DPM

GARRY STEWART, M.D.;

DEFENDANT

FIRST MOTION IN LIMINE

COMES separate defendant, Garry Stewart, M.D., and moves in limine to keep the plaintiff from presenting to the jury evidence of the following:

1. Any liability insurance of this defendant. Fed. R. Evid. 401; Fed. R. Evid. 403. See, *Hively v. Edwards*, 278 Ark. 435, 646 S.W.2d 688 (1983).
2. Any prior lawsuits, including malpractice suits against this defendant. Fed. R. Evid. 401; Fed. R. Evid. 403.
3. That the physician defendant is not required to be a witness against himself. Pursuant to Arkansas A.C.A. § 16-114-207(3).
4. Any current or past malpractice suits against expert witnesses for the defense. Fed. R. Evid. 401; Fed. R. Evid. 403.
5. Whether this defendant or any of the defendant's witnesses support or oppose tort reform. Fed. R. Evid. 401; Fed. R. Evid. 403.
6. Plaintiff's counsel should be precluded from stating or arguing to the jury that the medical issues in this case are "common sense." See A.C.A. § 16-114-206.

7. Plaintiff should be prohibited from offering any testimony as to what other friends, family members, doctors, nurses, or other medical care providers may have told them. Fed. R. Evid. 802, 402, and 403.

8. Plaintiff should not be allowed to pay any excerpts from videotaped depositions during *voir dire*, opening statements, or closing arguments. Fed. R. Civ. Pro. 32.

9. It is anticipated that plaintiff will attempt to refer to the requisite standard of medical care as a set of “patient safety rules” or other similar language. The requisite standard of care is not defined as a set of “patient safety rules” in Arkansas, and plaintiff should be prohibited from referring to the standard of care as such. *See* A.C.A. § 16-114-206; AMI 1501.

10. Plaintiff should not make any reference to any discovery requests propounded to any defendant herein wherein an objection has been raised during the course of discovery.

11. Plaintiff should be prohibited from attempting to impeach any witness with deposition testimony to which an objection was lodged prior to obtaining a ruling by the Court.

12. Plaintiff’s counsel should be prohibited from making any argument to the jury which asks them to analogize the medical standard of care in this case to the duty of the average person—or ordinary negligence.

13. Plaintiff’s counsel should be prohibited from making a “golden rule” argument to the jury—or asking the jury questions similar to “Is that how you want your doctor, nurse, or hospital to care for you?” AMI 1501; A.C.A. § 16-114-206.

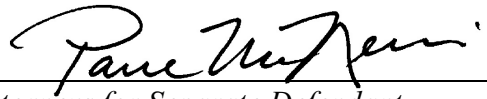
14. Any evidence regarding proposed mediation or settlement offers is irrelevant and inadmissible. Fed. R. Evid. 408, 402, 403.

15. No mention should be made that defendant has filed this Motion in Limine regarding any matters set forth herein.

16. A Brief in Support is being filed contemporaneously with this Motion in Limine.

WHEREFORE, defendant prays the motion in limine be granted and for all other proper relief.

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By: 
Attorneys for Separate Defendant,
Garry Stewart, M.D.

CERTIFICATE OF SERVICE

In accordance with the Arkansas Rules of Civil Procedure, I hereby certify that, on the 26th day of February, 2021, a true and accurate copy of the above and foregoing document was provided, as indicated below, to the following attorneys of record:

_____ Regular Mail _____ Electronic Mail _____ Facsimile
 x **the Court's CM/ECF filing system**

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